

Remarks/Arguments

Applicants have received and carefully reviewed the Office Action of the Examiner mailed January 23, 2007. Currently, claims 23-36 remain pending. Claims 23-36 have been rejected. In this amendment, claims 23 and 28 have been amended. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections – 35 USC § 102(b)

In paragraph 3 of the Office Action, claims 23, 24, 26, 28, 30, 32, 33, and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by Heath (U.S. Patent No. 5,725,570). After careful review, Applicant must respectfully traverse this rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (See MPEP § 2131). Accordingly, in order for Heath to anticipate claims 23, 24, 26, 28, 30, 32, 33, and 35, Heath must teach each and every element of the claims.

Applicant respectfully asserts that Heath fails to teach each and every element.

Heath appears to disclose a composite member for constructing tubular medical endoprostheses such as stents. The composite member may include a superelastic material. Heath does not appear to disclose the composite member including both superelastic and linear elastic properties. Instead, the entire composite member includes linear elastic properties prior to heat treatment and the entire composite member appears to include superelastic properties after the heat treatment. Heath does not appear to disclose the member including a portion having linear elastic properties and a second portion having superelastic properties. As such, Heath does not teach each and every element as is required for anticipation. Thus, for at least these reasons, claims 23, 24, 26, 28, 30, 32, 33, and 35 are believed to be not anticipated by Heath and Applicant respectfully requests withdrawal of the rejection.

In paragraph 4 of the Office Action, claims 23, 27, 28, 30, 32, and 36 were rejected under 35 U.S.C. 102(b) as being anticipated by Muni et al. (U.S. Patent No. 6,375,629). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 23, which recites:

23. (currently amended) A medical device, comprising:
a linear elastic member having at least one localized area of flexibility
formed by selectively heating ~~at least a~~ an intermediate portion of the
member to a temperature sufficient to induce superelasticity in the
member.

Claim 23 has been amended to recite, “a linear elastic member having at least one localized area of flexibility formed by selectively heating an intermediate portion of the member to a temperature sufficient to induce superelasticity in the member”. Nowhere does Muni et al. appear to disclose a linear elastic member have an intermediate portion being superelastic.

Instead, Muni et al. appears to disclose a core wire with a shapeable tip for use in a medical catheter. A superelastic core wire is subject to additional processing to remove its superelasticity thereby allowing the material to be shapeable to aid in advancing the core wire through a blood vessel or other body cavity. (See abstract). The core wire results in a substantially flexible proximal section and less flexible and greater shapeability at the distal tip. The proximal section may be superelastic while the distal tip is substantially linear elastic. (See column 7, lines 45-55). Nowhere does Muni et al. appears to teach a linear elastic member having an localized intermediate region being superelastic. Therefore, for at least these reasons, claim 23 is believed to be patentable over Muni et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons, as well as others, claim 27, which depends from claim 23 and includes significant additional limitations, is believed to be patentable over Muni et al. and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 28, which recites:

28. (currently amended) A medical device comprising:
a linear elastic member having a localized superelastic region;
wherein the localized superelastic region is formed by heating [[a]] an intermediate portion of the linear elastic member to a temperature sufficient to form the localized superelastic region within the linear elastic member.

Nowhere does Muni et al. appear to disclose, “wherein the localized superelastic region is formed by heating an intermediate portion of the linear elastic member to a

temperature sufficient to form the localized superelastic region within the linear elastic member", as recited in amended claim 28. Therefore, for similar reasons given above, as well as others, claim 28 is believed to be patentable over Muni et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons, as well as others, claims 30, 32, and 36, which depend from claim 28 and include significant additional limitations, are believed to be patentable over Muni et al. and Applicant respectfully requests withdrawal of the rejection.

Claim Rejection – 35 USC § 103(a)

In paragraph 6 of the Office Action, claims 25, 29, 31, and 34 were rejected under 35 U.S.C. 103(a) as being unpatentable over Heath or Muni et al. After careful review, Applicant must respectfully traverse this rejection. For similar reasons given above, as well as others, claims 25, 29, 31, and 34 are believed to be patentable over Heath or Muni et al. and Applicant respectfully requests withdrawal of the rejection.

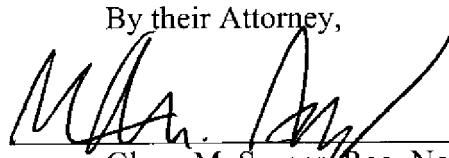
In view of the foregoing, all pending claims, namely claims 23-36, are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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